

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3965 of 1985

For Approval and Signature:

Hon'ble MR.JUSTICE R.BALIA.

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1. Whether Reporters of Local Papers may be allowed to see the judgment ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of judgment?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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NANUBHAI P PATEL

Versus

K V AROCHAM LTD  
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Appearance:

MR PREMAL R JOSHI for Petitioner  
Respondent served  
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CORAM : MR.JUSTICE R.BALIA.

Date of decision: 11/12/96

ORAL JUDGEMENT

The petitioner was ostensibly discharged from the services by the respondent under whom he was working

as Accountant-cum-Administrative Clerk at the monthly wages of Rs.600 at the time of discharging. The petitioner challenged the termination of services by resorting to Reference to Labour Court. The Labour Court found that the termination was not a discharge simpliciter but was punitive in character and since it was made in breach of principles of natural justice so much so that it was made by not affording him any opportunity of hearing. It set aside the order and ordered reinstatement. However, the petitioner was denied the claim to emoluments during the period of termination order remained effective on two grounds, namely, firstly, that he has not made any such demand in his charter of demands, and secondly, that he was gainfully employed during the period of termination.

2 It is the order denying the claim to backwages for the intervening period which is subject matter of challenge in this special civil application.

3 Having carefully considered the contentions raised, I am of the opinion that this petition deserves to succeed. Once the order has been held to be punitive in character and was set at naught for having been made in breach of principles of natural justice, the ordinary consequence is as if the order never came into existence and the status of employment as it was existing on the date of termination continues to exist and the employee is entitled to all the consequences of continuing in service as if termination order has never been passed. This is not a case where the alleged misconduct was found to have been proved and the case of imposition of lesser punishment nor, is a case of discharge simpliciter. Once it is deemed that the petitioner continues in employment throughout, claimed emoluments cannot be denied on other grounds. The claim to such emoluments does not depend upon making specific demand. Therefore, this petition succeeds. The petitioner is entitled to all consequences of being treated in employment uninterruptedly on termination order having been held to be punitive in character and void, ab initio having been made in breach of principles of natural justice which would include his claim to emoluments of which he held at the time of his termination of services.

Petition is accordingly allowed. Rule is made absolute as stated above with no order as to costs.

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